

DRAFT

TITLE 14

PENALTIES

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CHAPTER 1

GENERAL PROVISIONS

Section:

14-1-1	Application
14-1-2	Title
14-1-3	Purpose and authority
14-1-4	Conflicts
14-1-5	Meaning of terms
14-1-6	Severability

14-1-1: APPLICATION: The provisions of this title shall apply to the enforcement of Titles 10 (Building Regulations), 11 (Unified Development), 12 (Zoning Regulations), and 13 (Critical Areas Regulations), unless specifically addressed elsewhere in the code.

14-1-2: TITLE: This Title shall be known as the *PENALTIES ORDINANCE OF THE CITY OF LONG BEACH*, hereinafter referred to as “this title”.

14-1-3: PURPOSE AND AUTHORITY: The purpose of this title is to establish an effective and efficient system to enforce the regulations of the City of Long Beach, to provide an opportunity to correct alleged violations of such regulations, to establish monetary penalties for violations as authorized by RCW 35A.11.020, to provide for an appeal hearing on an alleged violation; and to establish a standard procedure to be used by the City to abate unsafe or unlawful conditions.

14-1-4: CONFLICTS: In the event of a conflict between this Title and any other provision of the Long Beach city code or City Ordinances providing for a civil penalty, this chapter shall control.

14-1-5: MEANING OF TERMS: For the purposes of this code, whenever the terms civil infraction and civil penalty are used in any code, ordinance or regulation of the City, those terms shall be deemed to have the same meaning as the terms civil violation and monetary penalty, respectively, as used herein.

14-1-6: SEVERABILITY: If any one or more sections, subsections or sentences of this chapter are held to be unconstitutional or invalid, such decision shall not affect the validity to the remaining portion of this chapter and the same shall remain in full force and effect.

CHAPTER 2

DEFINITIONS

Section:

14-2-1 Definitions

14-2-1: DEFINITIONS: As used in this title, unless a different meaning is plainly required:

ABATE: “Abate” means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a civil violation by such means, in such a manner and to such an extent as the Applicable Official determines is necessary in the interest of the general health, safety and welfare of the community.

ACT: “Act” means doing or performing something.

APPLICABLE OFFICIAL: “Applicable Official” means the mayor or administrator or department head or any designated alternate empowered by ordinance or by the Mayor to enforce a City of Long Beach ordinance or regulation.

CIVIL VIOLATION: “Civil violation” means a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs is a separate violation.

DEVELOPMENT: “Development” means any Division of Land or construction conversion, relocation, enlargement, or the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of any land above, at or below ground or water level, and all acts authorized by a City of Long Beach regulation. The Term “Development” also includes any definition contained in Titles 10, 11, 12 and 13 of the Long Beach city code.

EMERGENCY: “Emergency” means a situation where the Applicable Official determines that immediate action is required to prevent or eliminate threat to the health, safety, or welfare of persons or property or to the environment.

OMISSION: “Omission” means the failure to act.

PERSON: “Person” means any individual, firm, association, partnership, corporation or any entity, public or private.

PERSON RESPONSIBLE FOR THE VIOLATION: “Person responsible for the violation” means any person who is required by the applicable regulation to comply therewith, or who commits any act or omission that is a civil violation, or causes or permits a civil violation to occur or remain upon property in the City; and includes but is not limited to the owner(s), lessor(s),

tenant(s), contractor performing work on behalf of the owner(s), or other person(s) entitled to control, use and/or occupancy of the property where a civil violation may occur.

REGULATION: “Regulation” means and includes the following as now or hereafter amended:

- A. Long Beach City Code Title 10,(Developmental Regulations), Title 11 (Unified Development), Title 12 (Zoning Regulations), Title 13 (Critical Areas Regulations).
- B. All standards, regulations and procedures adopted pursuant to the above;
- C. The terms and conditions of any permit or approval issued by the City, or any concomitant agreement with the City pursuant to any said titles.

VIOLATION: “Violation” means an act or omission contrary to a City of Long Beach regulation, including an act or omission at the same or different location by the same person, and including a condition resulting from such act or omission.

VIOLATION, REPEAT: “Repeat violation” means a violation of the same regulation in any location by the same person within two years.

CHAPTER 3

PROCEDURES

Section:

- 14-3-1 Voluntary compliance
- 14-3-2 Notice of civil violation
- 14-3-3 Abatement by the city
- 14-3-4 Appeal process

14-3-1: VOLUNTARY COMPLIANCE:

- A. Applicability: This section applies whenever the Applicable Official determines that a violation of a regulation has occurred or is occurring.
- B. General. The Applicable Official shall pursue a reasonable attempt to secure voluntary correction by contacting the person responsible for the violation where possible, explaining the violation, and requesting correction.
- C. Issuance of Voluntary Compliance Agreement. A Voluntary Compliance Agreement may be entered into between the person responsible for the violation and the City, acting through the Applicable Official.
 - 1. Content. The Voluntary Compliance Agreement is a contract between the City and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The Voluntary Compliance Agreement shall include the following:
 - a. The name and address of the person responsible for the violation;
 - b. The street address or a description sufficient for identification of the building, structure, premises, or land upon which or within which the violation has occurred or is occurring;
 - c. A description of the violation and a reference to the provision(s) of the City of Long Beach ordinance or regulation that has been violated;
 - d. The necessary corrective action to be taken, and a date and time by which the corrective action must be completed; and
 - e. An agreement by the person responsible for the violation that the City of Long Beach may abate the violation and recover its costs and expenses and a monetary

penalty pursuant to this title from the person responsible for the violation if all terms of the Voluntary Compliance Agreement are not met.

2. Extension/Modification. An extension of the time limit for correction or a modification of the required corrective action may be granted by the Applicable Official if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation but unforeseen circumstances render correction under the original conditions unattainable.

3. Abatement by the City. The City may abate the violation in accordance with section 14-3-3, below, if the terms of the Voluntary Compliance Agreement are not met.

4. Collection of Costs. If the terms of the Voluntary Compliance Agreement are not met, the person responsible for the violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter in accordance with section 14-3-2(E) plus any costs and expenses of abatement, as set forth in section 14-3-3.

14-3-2: NOTICE OF CIVIL VIOLATION:

A. Issuance.

1. When the Applicable Official determines that a violation has occurred or is occurring, and is unable to secure voluntary compliance/correction pursuant to section 14-3-1, the Applicable Official may issue a Notice of Civil Violation to the person responsible for the violation.

2. The Applicable Official may issue a Notice of Civil Violation without having attempted to secure voluntary correction as provided in section 14-3-1 under the following circumstances:

- a. When an emergency exists, or
- b. When a repeat violation occurs; or
- c. When the violation creates a situation or condition which cannot be corrected; or
- d. When the person knows or reasonably should have known that the action is in violation of a City of Long Beach regulation.

B. Content. The Notice of Civil Violation shall include the following information:

1. The name and address of the person responsible for the violation; and

2. The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
 3. A description of the violation and a reference to the provision(s) of the City of Long Beach regulation that has been violated; and
 4. The required corrective action and a date and time by which the correction must be completed after which the City may abate the unlawful condition in accordance with section 14-3-3, and
 5. The opportunity to appeal to the Long Beach Municipal Court within 10 days from the date the Notice of Civil Violation is issued; and
 6. A statement that the costs and expenses of abatement incurred by the City pursuant to section 14-3-3, and a monetary penalty in an amount per day for each violation as specified in section 14-3-2(E) may be assessed against the person to whom the Notice of Civil Violation is directed.
- C. Service of Notice. The Applicable Official shall serve a copy of the Notice of Civil Violation upon the person to whom it is directed, either personally or by mailing, by both regular mail and certified mail, at their last known address. If the person to whom it is directed cannot, after due diligence, be personally served within Pacific County and if an address for mailed service cannot, after due diligence, be ascertained, notice shall be served by posting a copy of the Notice of Civil Violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person affecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting, the facts showing that due diligence was used in attempting to serve the person personally or by mail.
- D. Extension. No extension of the time specified in the Notice of Civil Violation for correction of the violation may be granted, except by order of the issuing official.
- E. Monetary Penalty. The maximum monetary penalty for each separate violation per day or portion thereof shall be as follows:
1. First day of each violation (the first day is the date of service) — \$100.00;
 2. Second day of each violation - \$200.00;
 3. Third day of each violation - \$300.00;
 4. Fourth day of each violation - \$400.00;
 5. Each additional day of each violation beyond four days - \$500.00 per day.

- F. Continued Duty to Correct. Payment of the monetary penalty does not relieve the person to whom the Notice of Civil Violation was issued of the duty to correct the violation.
- G. Collection of Monetary Penalty.
 - 1. The monetary penalty constitutes a personal obligation of the person to whom the Notice of Civil Violation is directed. Any monetary penalty assessed must be paid to the City of Long Beach within 10 calendar days from the date of receipt of the Notice of Civil Violation.
 - 2. The Clerk/Treasurer or his/her designee is authorized to take appropriate action to collect the monetary penalty, including but not limited to sending the judgment to a collection agency.
 - 3. In addition to the remedies provided above, the monetary penalty shall constitute a lien upon the real property on which the violation has occurred or is occurring. This lien may be foreclosed as provided by law for liens for labor and materials (RCW 60.04).

14-3-3: ABATEMENT BY THE CITY:

- A. The City may abate the condition that continues to be a civil violation when:
 - 1. The terms of Voluntary Compliance Agreement pursuant to section 14-3-1 of this title have not been met; or
 - 2. A Notice of Civil Violation has been issued pursuant to 14-3-2 and the required correction has not been completed by the date specified; or
 - 3. The condition is subject to summary abatement as provided for in section 14-3-3(B).
- B. Summary Abatement. Whenever any violation of a regulation causes a condition the continued existence of which constitutes an immediate and emergent threat to the public health, safety or welfare or to the environment, the City may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.
- C. Authorized Action by the City. Using any lawful means, the City may enter upon the subject property and may remove or correct the condition that is subject to abatement. City may seek such judicial process as it deems necessary to effect the removal or correction of such condition.
- D. Recovery of Costs and Expenses. The cost, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use and/or occupancy of the property and shall

become due and payable to the City of Long Beach within 10 calendar days of the bill being issued. The term “incidental expense” shall include, but not be limited to personnel costs, both direct and indirect; attorney’s fees, costs incurred in documenting the violation, hauling, storage and disposal expenses, and actual expenses and costs of the City in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work, and the costs of any required printing and mailing.

- D. Interference. It is a gross misdemeanor for any person to obstruct, impede, or interfere with the City or its agents, or with any person who owns, or holds any interest or estate in any property, in performing any acts necessary to correct the violation. A person convicted of a violation of this section (Interference with public official) may be punished up to one (1) year in jail and a \$5,000.00 dollar fine or both.

14-3-4: APPEAL PROCESS:

- A. Commencing an Appeal. A person to whom a Notice of Civil Violation is issued may appeal to the Long Beach Municipal Court by filing a Notice of Appeal and a Request for a Hearing with the court clerk within ten (10) calendar days after the notice is issued.
- B. The Hearing. The Long Beach Municipal Court shall conduct a hearing on the civil violation pursuant to the rules of procedure set forth in the Rules for Courts of Limited Jurisdiction (ARLJ). The Applicable Official and the person to whom the Notice of Civil Violation was directed may participate as parties in the hearing and each party may call witnesses. The City shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action is reasonable. The determination of the Applicable Official as to the need for the required corrective action shall be accorded substantial weight in determining the reasonableness of the required corrective action.
- C. Decision.
1. The Long Beach Municipal Court shall determine whether the City has established by a preponderance of the evidence that a violation has occurred and that the required corrective action is reasonable and shall affirm, vacate, or modify the City’s decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.
 2. The Court shall issue an Order to the person responsible for the violation that contains the following information:
 - a. The decision regarding the alleged violation including findings of fact and conclusions assessed thereon in support of the decision;
 - b. The required corrective action;
 - c. The date and time by which the correction must be completed;

- d. The monetary penalties assessed based on the criteria in section 14-3-2; and
 - e. The date and time after which the City may proceed with abatement of the unlawful condition if the required correction is not completed.
 - 3. The Court shall assess monetary penalties in accordance with the monetary penalty schedule in section 14-3-2. The Court may:
 - a. Assess monetary penalties beginning on the date the Notice of Civil Violation was issued and thereafter; or
 - b. Assess monetary penalties beginning on the correction date set by the Applicable Official or an alternate correction date set by the Court and thereafter; or
 - c. Assess no monetary penalty; or
 - d. Assess less than the maximum monetary penalty.
 - 4. When determining the monetary penalty assessment, the Court shall consider the following factors:
 - a. Whether the person responded to staff attempts to contact the person and cooperate with efforts to correct the violation;
 - b. Whether the person failed to appear at the hearing;
 - c. Whether the violation was a repeat violation;
 - d. Whether the person showed due diligence and/or substantial progress in correcting the violation;
 - e. Whether a genuine code interpretation issue exists; and
 - f. Any other relevant factors.
 - 5. The Court may double the monetary penalty schedule if the violation is a repeat violation. In determining the amount of the monetary penalty for repeat violations, the court shall consider the factors set forth above.
 - 6. Any order entered by the Court shall constitute a judgment in form of the City and against the violation.
- D. Notice of Decision. The Court shall issue the order at the hearing or via mail, by first class and certified mail, a copy of the decision to the appellant and the Applicable Official within ten (10) working days of the hearing. Any order entered shall constitute a judgment.

- E. Failure to Appear. If the person to whom the Notice of Civil Violation was issued fails to appear at the scheduled hearing, the Court shall enter an order finding that the violation occurred and assess the appropriate monetary penalty. The City will carry out the Court's order and recover all related expenses, plus the cost of the hearing and any monetary penalty, from that person. Any order entered shall constitute a judgment.
- F. Appeal to Superior Court. An appeal of the Municipal Court's decision must be filed with the Pacific County Superior Court within twenty (20) calendar days from the date of the Court's delivery of the decision to the person to whom the Notice of Civil Violation was directed, or is thereafter barred.

CHAPTER 4

ALTERNATIVE CRIMINAL PENALTIES

Section:

- 14-4-1 Knowing violations–alternative criminal penalties
- 14-4-2 Separate offence

14-4-1: KNOWING VIOLATIONS–ALTERNATIVE CRIMINAL PENALTIES: Any person who knowingly violates or fails to comply with any of the provisions of Titles 10, 11, 12, 13. or any other titles of the Long Beach city code amended or adopted that make use of the provisions of this title shall be guilty of a gross misdemeanor and upon conviction may be punished by up to one (1) year in jail and up to a \$5,000.00 dollar fine. The City Administrator may request that the City Attorney prosecute such violations as an alternative to the civil infraction procedure outlined in this title.

14-4-2: SEPARATE OFFENCE: Each day a violation of Title 10, 11, 12, 13, or such other titles subsequently adopted or amended to use the provisions herein occurs, such violation constitutes an offence, and each occurrence of a prohibited activity shall be deemed and considered a separate offence.